

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 IO-14 ISO-00 AF-10 ARA-14 EA-12
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AGRE-00 AID-05 CIAE-00 COME-00 INR-10 LAB-04
NSAE-00 OIC-02 SIL-01 STR-07 TRSE-00 CEA-01 SS-15
FTC-01 JUSE-00 OPIC-06 /161 W

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R 110947Z APR 78

FM USMISSION GENEVA

TO SECSTATE WASHDC 8182

INFO AMEMBASSY PARIS

USMISSION USUN NEW YORK

UNCLAS SECTION 01 OF 02 GENEVA 05386

USOECD

DEPT PASS JUSTICE FOR SHENEFIELD, FTC FOR FISCHBACH

E.O. 11652: N/A

TAGS: UNCTAD, OCON

SUBJECT: UNCTAD: THIRD AD HOC GROUP OF EXPERTS ON
RESTRICTIVE BUSINESS PRACTICES, FOURTH SESSION,
MARCH 28-APRIL 7, 1978

REF: GENEVA 4825

1. THE THIRD AD HOC GROUP OF EXPERTS OF THE UNCTAD COMMITTEE ON MANUFACTURES MET AT GENEVA FOR ITS FOURTH SESSION MARCH 28-APRIL 7. SEE REFTEL FOR REPORT OF FIRST WEEK'S SESSION. REPRESENTATION IN B GROUP WAS THE SAME IN THE SECOND WEEK.

2. SECOND WEEK OF SESSION, LIKE THE FIRST WEEK, WAS DEVOTED ENTIRELY TO AGENDA ITEM 2, PRINCIPLES AND RULES
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FOR CONTROL OF RBP'S. THE PACE OF DISCUSSIONS WAS SLOWER. ATMOSPHERE WAS NOT AS GOOD AS IN THE FIRST WEEK, AND AGREEMENTS ON NEW TEXTS WERE FEWER. FULL TEXT OF AGREED LANGUAGE OF SECOND WEEK FOLLOWS:

"SECTION B - DEFINITIONS:

(1) "RESTRICTIVE BUSINESS PRACTICES" (SEE FOOTNOTE) MEANS

ACTS OR BEHAVIOUR OF ENTERPRISES WHICH, THROUGH AN ABUSE OR ACQUISITION AND ABUSE OF A DOMINANT POSITION OF MARKET POWER, LIMIT ACCESS TO MARKETS OR OTHERWISE UNDULY RESTRAIN COMPETITION, HAVING OR BEING LIKELY TO HAVE ADVERSE EFFECTS ON INTERNATIONAL TRADE, PARTICULARLY THAT OF DEVELOPING COUNTRIES, AND ON THE ECONOMIC DEVELOPMENT OF THESE COUNTRIES, OR WHICH THROUGH FORMAL, INFORMAL, WRITTEN OR UNWRITTEN AGREEMENTS OR ARRANGEMENTS AMONG ENTERPRISES HAVE THE SAME EFFECTS."

(FOOTNOTE: SEE, E.G. LIST OF PRACTICES IDENTIFIED BY SECOND AD HOC GROUP OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES, (TD/B/C.2/AC.5/6, PARAS 38-43) END FOOTNOTE)

"SECTION B - SCOPE AND APPLICATION:

(3) THE PRINCIPLES AND RULES FOR ENTERPRISES ARE ADDRESSED TO ALL ENTERPRISES."

"PART D - RECOMMENDATIONS AS TO PRINCIPLES AND RULES ADDRESSED TO ENTERPRISES, INCLUDING TNC'S:

(2) ENTERPRISES SHOULD CONSULT AND COOPERATE WITH COMPETENT AUTHORITIES OF COUNTRIES DIRECTLY AFFECTED IN CONTROLLING RESTRICTIVE BUSINESS PRACTICES ADVERSELY AFFECTING THE INTERESTS OF THOSE COUNTRIES. IN THIS REGARD, ENTERPRISES SHOULD ALSO PROVIDE INFORMATION REQUIRED FOR THIS PURPOSE, INCLUDING THAT WHICH MAY BE LOCATED IN FOREIGN COUNTRIES TO THE EXTENT THAT IN THE UNCLASSIFIED

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LATTER EVENT SUCH PRODUCTION OR DISCLOSURE IS NOT PREVENTED BY APPLICABLE LAW OR ESTABLISHED PUBLIC POLICY. WHENEVER THE PROVISION OF INFORMATION IS ON A VOLUNTARY BASIS, ITS PROVISION SHOULD BE IN ACCORDANCE WITH SAFEGUARDS NORMALLY APPLICABLE IN THIS FIELD."

"(4) ENTERPRISES, INCLUDING TRANSNATIONAL CORPORATIONS, OPEN BRACKET WHEN DEALING WITH ENTERPRISES INDEPENDENT OF THEM CLOSE BRACKET OPEN BRACKET SHOULD CLOSE BRACKET OPEN BRACKET SHALL, INTER ALIA CLOSE BRACKET REFRAIN FROM THE FOLLOWING RESTRICTIVE BUSINESS PRACTICES:

(I) PARTICIPATING IN OR OTHERWISE PURPOSELY STRENGTHENING THE RESTRICTIVE EFFECTS OF CARTELS SUCH AS:

(A) AGREEMENTS FIXING PRICE AS TO EXPORTS AND IMPORTS;

(B) COLLUSIVE TENDERING;

(C) MARKET OR CUSTOMER ALLOCATION ARRANGEMENTS;

(D) ALLOCATION BY QUOTA AS TO SALES AND PRODUCTION;

(E) COLLECTIVE ACTION TO ENFORCE ARRANGEMENTS-E.G., BY CONCERTED REFUSALS TO DEAL;

(F) CONVERTED REFUSAL OF SUPPLIERS TO POTENTIAL IMPORTERS;

(G) COLLECTIVE DENIAL OF ACCESS TO AN ARRANGEMENT OR ASSOCIATION, WHICH IS CRUCIAL TO COMPETITION.

(II) OPEN BRACKET UNREASONABLY CLOSE BRACKET FIXING THE
PRICES AT WHICH GOODS EXPORTED CAN BE RESOLD IN IMPORTING
COUNTRIES."

"SECTION D

(5) ENTERPRISES, OPEN BRACKET INCLUDING TRANSNATIONAL
CORPORATIONS IN THE RELATIONS BETWEEN THEIR ENTITIES OR
OTHERWISE, SHALL, INTER ALIA, CLOSE BRACKET OPEN BRACKET
SHOULD CLOSE BRACKET REFRAIN FROM ABUSE OR ACQUISITION
AND ABUSE OF DOMINANT POSITIONS OF MARKET POWER BY MEANS
OF THE FOLLOWING RESTRICTIVE BUSINESS PRACTICES IN THE
RELEVANT MARKET:

(I) PREDATORY BEHAVIOUR TOWARDS COMPETITORS OR OPEN
BRACKET REFUSALS TO DEAL CLOSE BRACKET;"

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3. REMAINING TEXT ON THIS POINT FOR GROUP B IS IN ACCORD

WITH U.S. POSITION. U.S. DEL IS CARRYING FULL TEXT OF REPORT TO WASHINGTON.

4. GROUP B DELEGATES HAVE NOT SCHEDULED PREPARATORY MEETING PRIOR TO NEXT SESSION OF THE GROUP JULY 10-21, 1978 DUE TO DIFFICULTIES IN FINDING ACCEPTABLE DATES CONCURRENT WITH OECD RBP COMMITTEE MEETINGS SCHEDULED JUNE 6-9, 1978. IF A DRAFT OF THE MODEL LAW IS RECEIVED FROM THE UNCTAD SECRETARIAT BY EARLY JUNE, GROUP B SPOKESMAN, MORROW OF CANADA, WILL CALL A MEETING IN PARIS ON SATURDAY, JUNE 10. GROUP B DELEGATES ARE NOT ENTHUSIASTIC ABOUT SUCH A MEETING BUT FEEL IT MAY BE NECESSARY FOR ADEQUATE PREPARATION.

5. OVERALL, THIS SESSION OF THE AD HOC GROUP WAS UNCLASSIFIED

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RELATIVELY PRODUCTIVE. G-77 ATTITUDE WAS MORE BUSINESS-LIKE, AND SEEMED MORE CALCULATED TO REACH AGREEMENT. THEIR DELEGATIONS INCLUDED MORE HIGH LEVEL, WELL PREPARED PARTICIPANTS FROM HOME COUNTRIES. REMAINING BASIC ISSUES INCLUDE INTRA-ENTERPRISE PRACTICES, NATIONAL EXPORT CARTELS, EXCEPTIONS FOR 3 STATE-OWNED ENTERPRISES, PREFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES AND THEIR ENTERPRISES, REQUIREMENTS FOR DEVELOPED COUNTRIES TO INSTITUTE EXTENSIVE INFORMATION GATHERING MACHINERY CONCERNING RBP'S, FUTURE ROLE OF UNCTAD, INCLUDING POSSIBLE PERMANENT MACHINERY TO CONTROL RBP'S, AND LEGAL NATURE OF PRINCIPLES AND RULES.

6. UNCTAD SECRETARIAT HAS TENTATIVELY PROPOSED A CONFERENCE TO ADOPT THE PRINCIPLES AND RULES AS A CODE. US DEL IS SKEPTICAL OF POSSIBILITY THAT SUFFICIENT PROGRESS CAN BE MADE AT JULY SESSION TO PERMIT SUCH A CONFERENCE. CONSIDERATION TO POSSIBLE FURTHER MEETING OF EXPERT GROUP SHOULD ACCORDINGLY TAKE PLACE PRIOR TO JULY SESSION. SECRETARIAT IS INSISTENT THAT A CONFERENCE SHOULD BE HELD IN ANY EVENT PRIOR TO UNCTAD V IN MAY 1979. US DEL SUGGESTS THAT PRESENCE OF U.S. EXPERTS AS ADVISERS TO US REPRESENTATIVE AT ANY SUCH CONFERENCE IS ESSENTIAL IN VIEW OF THE COMPLEXITY OF THE SUBJECT MATTER.

7. NO OTHER ITEMS ON THE AGENDA OF THE GROUP WERE DISCUSSED. SECRETARIAT INDICATED IT WOULD TRY TO DISTRIBUTE THE DRAFT TEXT OF THE MODEL LAW BY THE BEGINNING OF JUNE.

8. A QUESTION AROSE AT THE MEETING CONCERNING THE PRESENCE OF OBSERVERS AT CONTACT GROUP MEETINGS. THE INTERNATIONAL CHAMBER OF COMMERCE ATTENDED WITHOUT OBJECTION OF ANY DELEGATIONS, ALTHOUGH THE SECRETARIAT

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ATTEMPTED TO KEEP THE ICC OUT. US DEL SUGGESTS THAT APPROVED ORGANIZATIONS SUCH AS ICC SHOULD BE PERMITTED TO ATTEND CONTACT GROUP MEETINGS AS WELL AS PLENARY SESSIONS, AND THAT US MISSION BE INSTRUCTED TO SUPPORT SUCH ATTENDANCE AT FUTURE MEETINGS.

9. USSR DELEGATON, AS IN PREVIOUS SESSIONS, PROTESTED PRESENCE OF FRG DELEGATE FROM CARTEL OFFICE IN BERLIN. FRENCH DELEGATE RESPONDED ON BEHALF OF THREE ALLIED POWERS. VANDEN HEUVEL

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